

ASSEMBLY BILL

No. 1468

Introduced by Assembly Member McCarthy

February 22, 2005

An act to amend Sections 45103.1 and 88003.1 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1468, as introduced, McCarthy. School and community college districts: classified employees: contracting.

Existing law permits personal services contracting by school districts and community college districts for all services currently or customarily performed by classified school employees to achieve cost savings, unless otherwise prohibited, if certain conditions are met, including, among others, that the contract not be approved solely on the basis that savings will result from lower contractor pay rates or benefits, the savings be large enough to ensure they will not be eliminated by private sector and district cost fluctuations, the savings clearly justify the size and duration of the contracting agreement, the potential for future economic risk to the district from potential contractor rate increases is minimal, and the potential economic advantage of contracting is not outweighed by the public's interest in having the function performed directly by the district.

This bill would delete those conditions specified above.

Existing law requires that the overall cost savings attributable to the proposed contract be clearly demonstrated and sets forth certain requirements relating to comparing costs.

This bill would delete those requirements relating to comparing costs.

Existing law requires that the contract not cause the displacement of district employees and specifies what “displacement” means for this purpose.

This bill would revise the meaning of displacement.

Existing law also permits personal services contracting when any of specified conditions can be met.

This bill would instead also permit personal services contracting not otherwise authorized when any of specified conditions can be met.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 45103.1 of the Education Code is amended to read:

45103.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, ~~when if~~ all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the school district, ~~provided that:~~

~~(A) In comparing costs, there shall be included the school district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.~~

~~(B) In comparing costs, there shall not be included the school district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the school district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.~~

~~(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing school district costs that would be directly associated with the contracted function. These continuing school district costs shall include, but~~

1 ~~not be limited to, those for inspection, supervision, and~~
2 ~~monitoring.~~

3 ~~(2) Proposals to contract out work shall not be approved solely~~
4 ~~on the basis that savings will result from lower contractor pay~~
5 ~~rates or benefits. Proposals to contract out work shall be eligible~~
6 ~~for approval if the contractor's wages are at the industry's level~~
7 ~~and do not undercut school district pay rates.~~

8 ~~(3)–~~

9 (2) The contract does not cause the displacement of school
10 district employees. The term “displacement” includes layoff,
11 demotion, involuntary transfer to a new classification,
12 involuntary transfer to a new location requiring a change of
13 residence, and time base reductions. ~~Displacement does not~~
14 ~~include changes in shifts or days off, nor does it include~~
15 ~~reassignment to other positions within the same classification and~~
16 ~~general location or employment with the contractor, so long as~~
17 ~~wages and benefits are comparable to those paid by the school~~
18 ~~district.~~

19 *(A) For purposes of this paragraph, displacement does not*
20 *include changes in shifts or days off, nor does it include*
21 *reassignment to other positions within the same classification*
22 *and general location or employment with the contractor, if the*
23 *hourly wages and the cost of the employee health benefits are*
24 *comparable to those provided by the school district for the same*
25 *classification of employee.*

26 *(B) For purposes of this paragraph, involuntary transfer to a*
27 *new classification does not include a transfer to a higher*
28 *classification, nor does it include a transfer when the transferred*
29 *employee receives hourly wages and health benefits in the new*
30 *classification that are at least equal to those for the prior*
31 *position.*

32 *(C) For purposes of a school transportation-related contract*
33 *governed by this section, displacement does not include an offer*
34 *of employment with the contractor if the school district employee*
35 *meets the employment requirements of the contractor. A district*
36 *employee meets the employment requirements of the contractor if*
37 *he or she successfully completes a criminal background check for*
38 *any conviction of a serious or violent felony listed in subdivision*
39 *(c) of Section 667.5 or subdivision (c) of Section 1192.7 of the*
40 *Penal Code.*

1 (D) If a school district employee has been transferred to a
2 contractor, the employee may not be dismissed without cause.

3 ~~(4) The savings shall be large enough to ensure that they will~~
4 ~~not be eliminated by private sector and district cost fluctuations~~
5 ~~that could normally be expected during the contracting period.~~

6 ~~(5) The amount of savings clearly justify the size and duration~~
7 ~~of the contracting agreement.~~

8 ~~(6)–~~

9 (3) The contract is awarded through a publicized, competitive
10 bidding process, *if the contract is subject to the provisions of*
11 *Section 20111 of the Public Contract Code.*

12 ~~(7)–~~

13 (4) The contract includes specific provisions pertaining to the
14 qualifications of the staff that will perform the work under the
15 contract, as well as assurance that the contractor's hiring
16 practices meet applicable nondiscrimination standards.

17 ~~(8) The potential for future economic risk to the school district~~
18 ~~from potential contractor rate increases is minimal.~~

19 ~~(9)–~~

20 (5) The contract is with a firm. A “firm” means a corporation,
21 limited liability corporation, partnership, nonprofit organization,
22 or sole proprietorship.

23 ~~(10) The potential economic advantage of contracting is not~~
24 ~~outweighed by the public's interest in having a particular~~
25 ~~function performed directly by the school district.~~

26 (b) Notwithstanding any other provision of this chapter,
27 personal services contracting *not otherwise authorized pursuant*
28 *to subdivision (a)* shall also be permissible when any of the
29 following conditions can be met:

30 (1) The contract is for new school district functions and the
31 Legislature has specifically mandated or authorized the
32 performance of the work by independent contractors.

33 (2) The services contracted are not available within the
34 district, cannot be performed satisfactorily by school district
35 employees, or are of such a highly specialized or technical nature
36 that the necessary expert knowledge, experience, and ability are
37 not available through the school district. *This paragraph does not*
38 *prohibit school districts from contracting for services.*

39 (3) The services are incidental to a contract for the purchase or
40 lease of real or personal property. Contracts under this criterion,

1 known as “service agreements,” shall include, but not be limited
2 to, agreements to service or maintain office equipment or
3 computers that are leased or rented.

4 (4) The policy, administrative, or legal goals and purposes of
5 the district cannot be accomplished through the utilization of
6 persons selected pursuant to the regular or ordinary school
7 district hiring process. Contracts are permissible under this
8 criterion to protect against a conflict of interest or to ensure
9 independent and unbiased findings in cases where there is a clear
10 need for a different, outside perspective. These contracts shall
11 include, but not be limited to, obtaining expert witnesses in
12 litigation.

13 (5) The nature of the work is such that the criteria for
14 emergency appointments apply. “Emergency appointment”
15 means an appointment made for a period not to exceed 60
16 working days either during an actual emergency to prevent the
17 stoppage of public business or because of the limited duration of
18 the work. The method of selection and the qualification standards
19 for an emergency employee shall be determined by the district.
20 The frequency of appointment, length of employment, and the
21 circumstances appropriate for the appointment of firms or
22 individuals under emergency appointments shall be restricted so
23 as to prevent the use of emergency appointments to circumvent
24 the regular or ordinary hiring process.

25 (6) The contractor will provide equipment, materials, facilities,
26 or support services that could not feasibly be provided by the
27 school district in the location where the services are to be
28 performed.

29 (7) The services are of such an urgent, temporary, or
30 occasional nature that the delay incumbent in their
31 implementation under the district’s regular or ordinary hiring
32 process would frustrate their very purpose.

33 (c) This section shall apply to all school districts, including
34 districts that have adopted the merit system.

35 (d) This section shall apply to personal service contracts
36 entered into after January 1, 2003. This section shall not apply to
37 the renewal of personal services contracts subsequent to January
38 1, 2003, where the contract was entered into before January 1,
39 2003, irrespective of whether the contract is renewed or rebid
40 with the existing contractor or with a new contractor.

SEC. 2. Section 88003.1 of the Education Code is amended to read:

88003.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by classified school employees to achieve cost savings is permissible, unless otherwise prohibited, ~~when if~~ all the following conditions are met:

(1) The governing board or contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the community college district; ~~provided that:~~

~~(A) In comparing costs, there shall be included the community college district's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.~~

~~(B) In comparing costs, there shall not be included the community college district's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the community college district. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.~~

~~(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing community college district costs that would be directly associated with the contracted function. These continuing community college district costs shall include, but not be limited to, those for inspection, supervision, and monitoring.~~

~~(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractors wages are at the industry's level and do not undercut community college district pay rates.~~

~~(3)~~

(2) The contract does not cause the displacement of community college district employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new classification, involuntary transfer to a new location requiring a

1 change of residence, and time base reductions. ~~Displacement~~
2 ~~does not include changes in shifts or days off, nor does it include~~
3 ~~reassignment to other positions within the same classification and~~
4 ~~general location or employment with the contractor, so long as~~
5 ~~wages and benefits are comparable to those paid by the school~~
6 ~~district.~~

7 *(A) For purposes of this paragraph, displacement does not*
8 *include changes in shifts or days off, nor does it include*
9 *reassignment to other positions within the same classification*
10 *and general location or employment with the contractor, if the*
11 *hourly wages and the cost of the employee health benefits are*
12 *comparable to those provided by the community college district*
13 *for the same classification of employee.*

14 *(B) For purposes of this paragraph, involuntary transfer to a*
15 *new classification does not include a transfer to a higher*
16 *classification, nor does it include a transfer when the transferred*
17 *employee receives hourly wages and health benefits in the new*
18 *classification that are at least equal to those for the prior*
19 *position.*

20 *(C) If a community college district employee has been*
21 *transferred to a contractor, the employee may not be dismissed*
22 *without cause.*

23 ~~(4) The savings shall be large enough to ensure that they will~~
24 ~~not be eliminated by private sector and community college~~
25 ~~district cost fluctuations that could normally be expected during~~
26 ~~the contracting period.~~

27 ~~(5) The amount of savings clearly justify the size and duration~~
28 ~~of the contracting agreement.~~

29 ~~(6)–~~

30 *(3) The contract is awarded through a publicized, competitive*
31 *bidding process, if the contract is subject to the provisions of*
32 *Section 20651 of the Public Contract Code.*

33 ~~(7)–~~

34 *(4) The contract includes specific provisions pertaining to the*
35 *qualifications of the staff that will perform the work under the*
36 *contract, as well as assurance that the contractor's hiring*
37 *practices meet applicable nondiscrimination standards.*

38 ~~(8) The potential for future economic risk to the community~~
39 ~~college district from potential contractor rate increases is~~
40 ~~minimal.~~

1 ~~(9)~~

2 (5) The contract is with a firm. A “firm” means a corporation,
3 limited liability corporation, partnership, nonprofit organization,
4 or sole proprietorship.

5 ~~(10) The potential economic advantage of contracting is not~~
6 ~~outweighed by the public’s interest in having a particular~~
7 ~~function performed directly by the community college district.~~

8 (b) Notwithstanding any other provision of this chapter,
9 personal services contracting *not otherwise authorized pursuant*
10 *to subdivision (a)* shall also be permissible when any of the
11 following conditions can be met:

12 (1) The contract is for new community college district
13 functions and the Legislature has specifically mandated or
14 authorized the performance of the work by independent
15 contractors.

16 (2) The services contracted are not available within
17 community college districts, cannot be performed satisfactorily
18 by community college district employees, or are of such a highly
19 specialized or technical nature that the necessary expert
20 knowledge, experience, and ability are not available through the
21 community college district. *This paragraph does not prohibit*
22 *community college districts from contracting for services.*

23 (3) The services are incidental to a contract for the purchase or
24 lease of real or personal property. Contracts under this criterion,
25 known as “service agreements,” shall include, but not be limited
26 to, agreements to service or maintain office equipment or
27 computers that are leased or rented.

28 (4) The policy, administrative, or legal goals and purposes of
29 the community college district cannot be accomplished through
30 the utilization of persons selected pursuant to the regular or
31 ordinary hiring process. Contracts are permissible under this
32 criterion to protect against a conflict of interest or to ensure
33 independent and unbiased findings in cases where there is a clear
34 need for a different, outside perspective. These contracts shall
35 include, but not be limited to, obtaining expert witnesses in
36 litigation.

37 (5) The nature of the work is such that the criteria for
38 emergency appointments apply. “Emergency appointment”
39 means an appointment made for a period not to exceed 60
40 working days either during an actual emergency to prevent the

1 stoppage of public business or because of the limited duration of
2 the work. The method of selection and the qualification standards
3 for an emergency employee shall be determined by the
4 community college district. The frequency of appointment,
5 length of employment, and the circumstances appropriate for the
6 appointment of firms or individuals under emergency
7 appointments shall be restricted so as to prevent the use of
8 emergency appointments to circumvent the regular or ordinary
9 hiring process.

10 (6) The contractor will provide equipment, materials, facilities,
11 or support services that could not feasibly be provided by the
12 community college district in the location where the services are
13 to be performed.

14 (7) The services are of such an urgent, temporary, or
15 occasional nature that the delay incumbent in their
16 implementation under the community college district's regular or
17 ordinary hiring process would frustrate their very purpose.

18 (c) This section shall apply to all community colleges,
19 including community college districts that have adopted the merit
20 system.

21 (d) This section shall apply to personal service contracts
22 entered into after January 1, 2003. This section shall not apply to
23 the renewal of personal services contracts subsequent to January
24 1, 2003, where the contract was entered into before January 1,
25 2003, irrespective of whether the contract is renewed or rebid
26 with the existing contractor or with a new contractor.